

[ATTORNEYS LISTED ON NEXT PAGE]

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA, WESTERN DIVISION

ERICK GALLO, ARMANDO  
GUTIERREZ, ANGEL MIRAMONTES,  
ANTONIO MIRAMONTES, LUIS  
MIRAMONTES, MANUEL MONTES,  
and SAMUEL ALVAREZ HARO  
individually, on behalf of all others  
similarly situated, and on behalf of the  
general public,

Plaintiffs,

vs.

MASCO CORPORATION, a corporation,  
MASCO SERVICES GROUP  
CORPORATION, a corporation, GUY  
EVANS, INC., a corporation, BUILDER  
SERVICES GROUP, INC., a corporation,  
and DOES 1 through 20, inclusive

Defendants.

CASE NO. 08 CV-604 J CAB

*Assigned for all purposes to Judge John A.  
Houston*

**JOINT MOTION AND [PROPOSED]  
ORDER DISMISSING WITHOUT  
PREJUDICE MASCO CORPORATION  
AND MASCO SERVICES GROUP  
CORPORATION**

Complaint Filed: April 8, 2008

Trial Date: *none set*

Case No. 08 CV-604 J CAB

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Attorneys for Defendants GUY EVANS, INC., and  
BUILDER SERVICES GROUP, INC

1 Pursuant to CivLR 7.2, the parties to this action, Plaintiffs Erick Gallo, Armando  
2 Gutierrez, Angel Miramontes, Antonio Miramontes, Luis Miramontes, Manuel Montes, and  
3 Samuel Alvarez Haro ("Plaintiffs") and Defendants Guy Evans, Inc., and Builder Services Group,  
4 Inc. ("Defendants"), through their respective counsel of record, stipulate and agree to the  
5 following

6 **Procedural Posture: Case "In Issue"**

- 7 1. On April 8, 2008, Plaintiffs filed their Complaint, and on April 14, 2008, Plaintiffs  
8 completed service of their Complaint. Thereafter, on May 22, 2008, Plaintiffs  
9 filed a First Amended Complaint adding Samuel Alvarez Haro as a plaintiff.  
10 2. On June 26, 2008, Defendants filed their Answer to Plaintiffs' First Amended  
11 Complaint.

12 **Following Conference of Counsel and Pursuant to the Parties Tolling Agreement,**  
13 **Plaintiffs Have Voluntarily Agreed to Dismiss Without Prejudice Masco**  
14 **Corporation and Masco Services Group Corporation**

- 15 3. Prior to Defendants filing their Answer, counsel for all parties conferred  
16 telephonically and via email regarding the appropriateness of maintaining the  
17 instant action against Masco Corporation and Masco Services Group Corporation.  
18 4. Ultimately, the parties, through their respective counsel, entered into a tolling  
19 agreement (attached hereto as Exhibit A is a correct copy of the executed  
20 Agreement).  
21 5. Pursuant to the parties' tolling agreement, Plaintiffs have voluntarily agreed to  
22 dismiss without prejudice Masco Corporation and Masco Services Group  
23 Corporation.  
24 6. Defendants do not object to Plaintiffs dismissing without prejudice Masco  
25 Corporation and Masco Services Group Corporation.

26  
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1  
2 Dated: July \_\_\_\_\_, 2008

RUKIN HYLAND DORIA & TINDALL LLP

3  
4 By: \_\_\_\_\_

JOHN F. HYLAND

5 Attorneys for ERICK GALLO, ARMANDO  
6 GUTIERREZ, ANGEL MIRAMONTES, ANTONIO  
7 MIRAMONTES, LUIS MIRAMONTES, MANUEL  
8 MONTES, and SAMUEL ALVAREZ HARO

9  
10 Dated: August 14, 2008

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11 By: s/Linda J. Gulledge \_\_\_\_\_

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12 Attorneys for ERICK GALLO, ARMANDO  
13 GUTIERREZ, ANGEL MIRAMONTES, ANTONIO  
14 MIRAMONTES, LUIS MIRAMONTES, MANUEL  
15 MONTES, and SAMUEL ALVAREZ HARO

16  
17 Dated: July \_\_\_\_\_, 2008

PROSKAUER ROSE LLP

18 By: \_\_\_\_\_

ARTHUR F. SILBERGELD

19 Attorneys for GUY EVANS, INC., and BUILDER  
20 SERVICES GROUP, INC.

1      *August*  
2      Dated: ~~July~~ 13, 2008

RUKIN HYLAND DORIA & TINDALL LLP

3  
4      By: 

JOHN F. HYLAND

5      Attorneys for ERICK GALLO, ARMANDO  
6      GUTIERREZ, ANGEL MIRAMONTES, ANTONIO  
7      MIRAMONTES, LUIS MIRAMONTES, MANUEL  
8      MONTES, and SAMUEL ALVAREZ HARO

9  
10      Dated: July \_\_\_\_\_, 2008

GULLEDGE LAW GROUP

11      By: \_\_\_\_\_

LINDA J. GULLEDGE

12      Attorneys for ERICK GALLO, ARMANDO  
13      GUTIERREZ, ANGEL MIRAMONTES, ANTONIO  
14      MIRAMONTES, LUIS MIRAMONTES, MANUEL  
15      MONTES, and SAMUEL ALVAREZ HARO

16      *August 7*  
17      Dated: ~~July~~ \_\_\_\_\_, 2008

PROSKAUER ROSE LLP

18      By: 

ARTHUR F. SILBERGELD

19      Attorneys for GUY EVANS, INC., and BUILDER  
20      SERVICES GROUP, INC.

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**EXHIBIT A**

### TOLLING AGREEMENT

ERICK GALLO, ARMANDO GUTIERREZ, ANGEL MIRAMONTES, ANTONIO MIRAMONTES, LUIS MIRAMONTES, MANUEL MONTES, and SAMUEL ALVAREZ HARO (collectively "PLAINTIFFS"), by and through their counsel, John F. Hyland and Rukin Hyland Doria & Tindall LLP, and MASCO CORPORATION, MASCO SERVICES GROUP CORP. (erroneously named as "Masco Services Group Corporation"), GUY EVANS, INC., and BUILDER SERVICES GROUP, INC. (collectively "DEFENDANTS"), by and through their counsel, Arthur F. Silbergeld and Proskauer Rose LLP, enter this agreement tolling the applicable statutes of limitations ("Agreement") governing PLAINTIFFS' claims, as alleged in the first amended complaint PLAINTIFFS filed in the action entitled *Gallo, et al. v. Masco Corporation, et al.* (the "Lawsuit") (United States District Court for the Southern District of California, Case No. 3:08 CV 604 J CAB).

WHEREAS, PLAINTIFFS filed the Lawsuit on April 2, 2008, asserting claims against DEFENDANTS arising out of PLAINTIFFS' employment; and

WHEREAS, Masco Corporation and Masco Services Group Corp. contend that neither entity employ nor at any time employed PLAINTIFFS, and that PLAINTIFFS cannot validly assert claims against either entity; and

WHEREAS, Masco Corporation and Masco Services Group Corp. has requested that PLAINTIFFS dismiss them as defendants from the Lawsuit;

WHEREAS, PLAINTIFFS maintain that a basis for liability may exist as to Masco Corporation and Masco Services Group Corp., and that a basis for liability may also exist as to other related entities, but PLAINTIFFS require additional information in this regard, including information regarding the structure of these entities, their operations, and the interrelationship of the various Masco and Masco-related entities; and

WHEREAS, Masco Corporation and Masco Services Group Corp. expressly deny the existence of any basis of liability as to it or them or any of its or their subsidiary, related or affiliated companies and further deny that the production of any additional information would aid in the establishment of liability against Masco Corporation and/or Masco Services Group Corp. in this regard,

NOW, THEREFORE, PLAINTIFFS and DEFENDANTS agree as follows:

1. PLAINTIFFS and DEFENDANTS agree and hereby stipulate that the applicable statutes of limitations governing the claims asserted in the first amended complaint in the Lawsuit and any related claims against Guy Evans, Inc. and Builder Services Group Inc. shall be tolled as against Masco Corporation, Masco Services Group Corp., and all related or affiliated entities, as of the date on which DEFENDANTS'

counsel executes this Agreement and shall remain tolled until the sixtieth (60<sup>th</sup>) day following the date on which PLAINTIFFS or DEFENDANTS provide written notice via facsimile of their intent to terminate this Agreement ("the tolling period") or the date on which the Court certifies or denies certification of the Lawsuit as a class action, whichever occurs first.

2. PLAINTIFFS shall request dismissal of Masco Corporation and Masco Services Group Corp. from the Lawsuit without prejudice.

3. Notwithstanding PLAINTIFFS' dismissal of these entities, PLAINTIFFS and DEFENDANTS agree that, subject to the applicable Federal Rules of Civil Procedure and without waiving any of Defendants' objections thereunder, PLAINTIFFS may propound reasonable discovery in the Lawsuit directed at ascertaining whether a basis for liability exists as to Masco Corporation, Masco Services Group Corp. or any related or affiliated entities.

4. Nothing in this Agreement shall be construed as an admission by DEFENDANTS of liability or of the validity of any claim asserted by PLAINTIFFS.

5. This Agreement contains the entire agreement between PLAINTIFFS and DEFENDANTS on this subject and may only be modified in writing, signed by authorized representatives of PLAINTIFFS and DEFENDANTS.

6. The signatures below are by the attorneys representing PLAINTIFFS and DEFENDANTS as indicated. Each attorney represents that he has authority to enter into this Agreement. PLAINTIFFS and DEFENDANTS, through respective counsel, have been advised and understand that this Agreement may affect their legal rights.

7. This Agreement may be executed in counterparts and will take effect upon execution by PLAINTIFFS' counsel and DEFENDANTS' counsel.

Dated: July 22, 2008

RUKIN HYLAND DORIA & TINDALL LLP

By: 

JOHN F. HYLAND

GULLEDGE LAW GROUP

Linda Gulledge

Kelly Woody Gulledge

Attorneys for ERICK GALLO, ARMANDO  
GUTIERREZ, ANGEL MIRAMONTES, ANTONIO  
MIRAMONTES, LUIS MIRAMONTES, MANUEL



MONTES, and SAMUEL ALVAREZ HARO

Dated: July 28, 2008

PROSKAUER ROSE LLP

By: 

ARTHUR F. SILBERGELD

Attorneys for MASCO CORPORATION, MASCO  
SERVICES GROUP CORP., GUY EVANS, INC., and  
BUILDER SERVICES GROUP, INC.